

PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number (Optional) <div style="text-align: center;">2667/108</div>			
<div>I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)]</div> <div>on _____</div> <div>Signature _____</div> <div>Typed or printed name Jay Sandvos</div>	Application Number <div style="text-align: center;">10/506,744</div>		Filed <div style="text-align: center;">March 8, 2005</div>		
	First Named Inventor <div style="text-align: center;">Leonidas Diamantopoulos</div>				
	Art Unit <div style="text-align: center;">3736</div>		Examiner <div style="text-align: center;">Hand</div>		
<p>Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.</p> <p>This request is being filed with a notice of appeal.</p> <p>The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.</p> <p>I am the</p> <table style="width: 100%; border: none;"><tr><td style="width: 50%; vertical-align: top;"><div><input type="checkbox"/> applicant/inventor.</div><div><input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)</div><div><input checked="" type="checkbox"/> attorney or agent of record. Registration number 43,900</div><div><input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 _____</div></td><td style="width: 50%; vertical-align: top; border-left: 1px solid black; padding-left: 10px;"><div style="text-align: center;">/Jay Sandvos, #43,900/</div><div style="text-align: center;">_____ Signature</div><div style="text-align: center;">Jay Sandvos _____ Typed or printed name</div><div style="text-align: center;">(617) 443-9292 _____ Telephone number</div><div style="text-align: center;">June 22, 2007 _____ Date</div></td></tr></table> <p>NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.</p>				<div><input type="checkbox"/> applicant/inventor.</div> <div><input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)</div> <div><input checked="" type="checkbox"/> attorney or agent of record. Registration number 43,900</div> <div><input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 _____</div>	<div style="text-align: center;">/Jay Sandvos, #43,900/</div> <div style="text-align: center;">_____ Signature</div> <div style="text-align: center;">Jay Sandvos _____ Typed or printed name</div> <div style="text-align: center;">(617) 443-9292 _____ Telephone number</div> <div style="text-align: center;">June 22, 2007 _____ Date</div>
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<div><input type="checkbox"/> *Total of <u>1</u> forms are submitted.</div>					

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant:	Diamantopoulos, L	Atty. Dkt:	2667/108
Serial No:	10/506,744	Art Unit:	3736
Date Filed:	March 8, 2005	Examiner:	Hand
Invention:	A Catheter		

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Dear Sir:

Following a Final Office Action dated March 29, 2007, Applicant submits the present Request for Formal Review, by a panel of examiners, of the legal and factual basis of the rejections pending in the present case, in accordance with the Pre-Appeal Brief Conference Pilot Program.¹ Applicant believes that the issues are well-posed for appeal, and request formal review prior to appeal on the following grounds:

I. Background Synopsis of Subject Matter

The claims of the instant application relate to a vascular catheter that includes a displacement detector.

II. Synopsis of Status of the Case

Claims 15-29 are pending. Claims 15-20 and 24-29 stand rejected under 35 U.S.C. §102(a) as being anticipated by Diamantopoulos (WO 01/74263). Claims 21-23 stand rejected under 35 U.S.C. §103 as obvious from Diamantopoulos in view of Acker (U.S. Patent 5,833,608).

¹ Official Gazette of the United States Patent and Trademark Office, vol. 1296, Number 2, (July 12, 2005).

III. Issue for Review Prior to Appeal:

1. A *prima facie* anticipation or obviousness rejection is improper when claim limitations are not found in the cited prior art reference(s).

It is well settled that a claim is invalid as anticipated under 35 U.S.C. § 102 only if a single prior art reference discloses either expressly or inherently, each limitation of the claim. *In re Cruciferous Sprout Litigation*, 301 F.3d 1343 (Fed. Cir. 2002). And, as set forth in MPEP §§ 2143 and 2143.03, the cited prior art references must teach or suggest all claim limitations before a *prima facie* case of obviousness can be made. Neither Diamantopoulos nor Acker teaches or suggests, alone or in combination, each and every limitation of the present claims.

Independent Claim 15 is directed to a catheter that includes at least one resiliently biased projection and at least one displacement detector. The displacement detector generates a signal which varies as a function of radial displacement of the resiliently biased projection relative to the longitudinal axis of the catheter. The cited references do not teach a catheter with such a displacement detector.

Diamantopoulos teaches a catheter having thermal sensors which just measures temperature. *See the Abstract*. The Examiner points to discussion in Diamantopoulos regarding vessel mapping based on temperature profile for detection of inflamed or unstable plaque. *Page 2, line 28-page 3, line 3*. But the mere fact that in that specific situation temperature is varying radially is not the same thing as the sensor signal varying as a function of radial displacement. The sensor signal in Diamantopoulos is still a function of and responding to changes in temperature, not radial displacement. There are obviously many regions within the vessels in which temperature is relatively constant throughout such that the sensor in Diamantopoulos will not vary with radial displacement.

The logical fallacy in the Examiner's reasoning is exposed by a simple analogy. If a claim required a sensor which varied as a function of time, it would not be taught by a sensor which varied as a function of light. Light might arguably change as between day and night, but it also changes in response to clouds, rain, shadows, moonlight, etc. And

the light sensor signal is not changing as a function of time, for example, it will be unchanging throughout the length of a moonless night or sunny day. So a light sensor is dependent on and responsive to changes in time, so a light sensor would change responsive to and as a function of time.

It is the same here with the claimed radial displacement sensor and the cited temperature sensor. While in the single very specific circumstance cited temperature changes with radial displacement, blood temperature also changes with other variables such as displacement from the skin surface, activity level of the person, digestion activity, etc. So Diamantopoulos' temperature sensor is not changing in as a function of and in dependence on radial displacement as required by claim 15.

Similarly, the position sensor disclosed in Acker is located within a probe and is used to determine a position of the probe itself. The sensor does not, however, generate a signal that varies as a function of displacement of portion of the probe from the longitudinal axis of the probe.

For at least the foregoing reasons, Claim 15 is patentable over the cited references. Claims 16-29 depend from Claim 15 and, therefore, are patentable for at least the same reasons.

Accordingly, it is submitted that the Examiner's rejection of this application is untenable and were this application to proceed to a full Appeal before the Board of Appeals and Interferences, the Examiner would clearly be reversed. The arguments presented in the responses to each of the previous office actions associated with this application are also maintained.

IV. Conclusion

The cited references fail to disclose all of the limitations of the present claims. Thus, it is respectfully submitted that a prima facie case of obviousness can be properly made or sustained based on the references relied upon by the Examiner. Therefore, allowance of all claims is respectfully requested.

Appl. No. 10/506,744
Pre-Appeal Request for Review dated June 22, 2007.
Further to Final Office Action of March 29, 2007

Respectfully submitted,

/Jay Sandvos, #43,900/

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